



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0631]

RIN 1625-AA08

Special Local Regulation; Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for power boat races. This action is necessary to ensure safety of life on navigable waters on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without permission from the Captain of the Port Key West or a designated representative.

DATES: This rule is effective from 9:30 a.m. until 4:30 p.m. each day on November 6, 8, and 10, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0631 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Vera Max, Sector Key West Waterways Management Division, Coast Guard; telephone (305) 292-8768, email SKWWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 20, 2019, Race World Offshore notified the Coast Guard that it would be conducting high speed boat races from 9:30 a.m. until 4:30 p.m. each day on November 6, 8, and 10, 2019. Approximately 50 participants and 200 spectator craft are expected to attend the event, which will take place in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. In response, on August 6, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, “Special Local Regulation; Atlantic Ocean, Key West, FL” (84 FR 38148). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this power boat race event. During the comment period that ended September 5, 2019, we received one supporting comment.

Another sponsor intends to conduct a high-speed boat race on the same dates and times as the Race World Offshore’s event. The other sponsor has an existing waterway

closure already listed in the regulations at 33 CFR 100.701, Table to § 100.701(c)(4).

Regardless of which sponsor's event or events are conducted, the regulated area will be the same, as both events have nearly identical race courses.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

This rule has already been released for public comments, which are addressed in Section IV. Delaying the effective date of this rule would be impracticable because the event is taking place on November 6, 8, and 10, 2019, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233). The Captain of the Port Key West (COTP) has determined that the potential hazards associated with the high-speed boat race would be a safety concern for the participants, participant vessels, and the general public. The purpose of this rule is to protect event participants, spectators, and vessels on the navigable waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment in support of our NPRM, which published on August 6, 2019. There is one change in the regulatory text from the regulatory text in the NPRM. The sponsor's event title is removed due to the uncertainty of which entity will be responsible for the races. The races will be held in the same

location, on the same dates, at the same time, regardless of which sponsor is responsible. All other particulars for the event are the same.

This rule establishes a temporary special local regulation from 9:30 a.m. until 4:30 p.m. on November 6, 8, and 10, 2019. The temporary special local regulation consists of two regulated areas: (1) race and safety buffer area, and (2) spectator area. These areas prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the race area or buffer zone and prohibit vessels from transiting at speeds that cause wake within the spectator area, unless authorized by the COTP Key West or a designated representative. The temporary special local regulation covers all navigable waters in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to

OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location, duration, and time-of-day of the regulated area. Although persons and vessels may not enter, transit through, anchor in, or remain within the area without authorization from the COTP or a designated representative, they will be able to safely transit around the area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the area, and the rule will allow vessels to seek permission to enter the area between race heats.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation lasting 7 hours on 3 days that will prohibit entry into the race area or buffer zone, and prohibit vessels from transiting at speeds that cause wake within the spectator area. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated

under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add a temporary § 100.T799-0631 to read as follows:

§ 100.T799-0631 Special Local Regulation; Power Boat Races, Key West, FL.

(a) *Locations.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race and Safety Buffer Area.* Waters of the Atlantic Ocean of Key West, FL that are encompassed within the following points: starting at Point 1 in position 24°32.506'N, 81°49.984'W; thence southwest to Point 2 in position 24°32.455'N, 81°49.040'W; thence northwest to Point 3 in position 24°32.559'N, 81°49.584'W; thence northwest to Point 4 in position 24°32.608'N, 81°49.628'W; thence northwest to Point 5

in position 24°33.095'N, 81°49.265'W; thence northeast to Point 6 in position 24°33.518'N, 81°48.902'W; thence northeast to Point 7 in position 24°33.908'N, 81°48.448'W; thence east to Point 8 in position 24°33.898'N, 81°48.364'W; thence southeast back to origin.

(2) *Spectator Area.* All waters of the Atlantic Ocean in Key West, FL that are encompassed within the following points: starting at Point 1 in position 24°33.123'N, 81°49.290'W; thence northeast to Point 2 in position 24°33.545'N, 81°48.923'W; thence east to Point 3 in position 24°33.518'N, 81°48.902'W thence southwest to point 4 in position 24°33.095'N, 81°49.265'W thence west back to origin..

(b) *Definition.* As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West in the enforcement of the safety zone.

(c) *Regulations.* (1) All non-participant persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the Captain of the Port Key West or their designated representative.

(2) All persons are prohibited from entering the water or swimming in the spectator area described in paragraph (a)(2) of this section.

(3) All vessels are prohibited from transiting at speeds that cause wake within the

spectator area described in paragraph (a)(2) of this section.

(4) To seek permission to enter, contact the Captain of the Port Key West or a designated representative by telephone at (305) 433-0954, or via VHF radio on channel

16. If authorization is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative

(5) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Enforcement Period.* This section will be enforced from 9:30 a.m. until 4:30 p.m. on November 6, 8, and 10, 2019.

Dated: October 17, 2019.

A. Chamie,
Captain, U.S. Coast Guard,
Captain of the Port Key West.

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